

7 MAY 1959

Mr. Phillip S. Hughes  
Assistant Director for  
Legislative Reference  
Bureau of the Budget  
Washington 25, D. C.

Dear Mr. Hughes:

In accordance with your request forwarded by memorandum dated April 23, 1959, this Agency has reviewed and has no comment to offer concerning the Bureau of the Budget's draft bill "To authorize Government agencies to provide quarters, household furniture and equipment, utilities, subsistence and laundry service to civilian officers and employees of the United States, and for other purposes."

Very truly yours,

s/ Lawrence R. Houston

Lawrence R. Houston  
General Counsel

cc: Comptroller

ATINTL

My dear Mr. Speaker:

I have the honor to transmit herewith a proposed bill "To authorize Government agencies to furnish quarters, household furniture and equipment, utilities, subsistence, and laundry service to certain civilian officers and employees of the United States, and for other purposes."

The proposed bill would consolidate and restate those related provisions of law which authorize the furnishing of quarters to civilian employees and which govern the rates to be charged for rental of government quarters by any person which now appear (a) in basic law, (b) in annual appropriation acts, and (c) in administrative regulations which, by statute, are controlling.

The existing law of general application which authorizes the furnishing of quarters to civilian employees, and which establishes a basis for determining rental rates, is section 3 of the Act of March 5, 1928 (5 U. S. C. 75a).

It reads as follows:

"The head of an executive department or independent establishment, where, in his judgment, conditions of employment require it, may continue to furnish civilians employed in the field service with quarters, heat, light, household equipment, subsistence, and laundry service; and appropriations of the character used before March 5, 1928, for such purposes are made available therefor: Provided, That the reasonable value of such allowances shall be determined and considered as part of the compensation in fixing the salary rate of such civilians."

This law follows the sound basic principle that the Government should charge employees the reasonable value of quarters and related items furnished to

- 2 -

them. However, it is inadequate in several respects. It does not by its terms apply to those Government quarters which are occupied by members of the uniformed services on a rental basis, nor to those Government quarters which may be occupied by persons who are not employees of the Government, such as contractors' employees who may be provided quarters, under Government direction, in support of a Federal program.

Moreover, it is not specific enough for agencies to apply it with reasonable uniformity since it sets no detailed criteria for establishing rents. This Act does not expressly provide for Government-wide regulations thereunder. It establishes the basic principle of basing rents and related charges on reasonable value to the recipient, but gives no basis for determining reasonable value, that is, whether based on the commercial rental rates of comparable facilities, on the Government's investment in the quarters, or on other factors. Also, the Act does not prescribe how this basic principle should apply in cases such as hardship or isolated location, or require the timely re-examination of charges which may have been established so as to bring them up to date to reflect changing circumstances.

Considerable variation in the interpretation of this basic law, and an evident failure by many agencies to charge their employees with the reasonable value of the quarters, came to the attention of both the Bureau of the Budget and the General Accounting Office about ten years ago. As a result, the

- 3 -

Bureau of the Budget issued its Circular No. A-45 in 1951, prescribing, for the first time, certain procedures aimed at bringing uniformity, within the framework of this statute, in establishing rental rates for quarters and related items. This Circular prescribed, as the basic criterion for determining reasonable value for rental purposes, that rents should be set at levels similar to those prevailing for comparable private housing located in the same area. Also, it enumerated certain considerations which could be used to modify this criterion of comparability, such as isolated location, and instances where an employee might, for the convenience of the Government, have to accept quarters of size or quality beyond that which he would choose of his own accord.

A 1952 revision of the Circular has been given the force and effect of law by provisions in recent annual appropriation acts. The most recent provision is section 208 of the General Government Matters Appropriation Act, 1959, which reads:

"During the current fiscal year, the provisions of Bureau of the Budget Circular No. A-45, dated June 3, 1952, shall be controlling over the activities of all departments, agencies, and corporations of the Government: Provided, That said Circular may be amended or changed during such year by the Director of the Budget with the approval of the chairman of the Committee on Appropriations of the House of Representatives; Provided further, That the Bureau of the Budget shall make a report to Congress not later than January 31, 1959, of the operations of this order upon all departments, agencies and corporations of the Government: Provided further, That notwithstanding the provisions of any other law, no officer or employee shall be required to occupy any Government-owned quarters unless the head of the agency concerned shall determine that necessary service cannot be rendered or property

- 4 -

This has frozen into law each year an administrative regulation that is now somewhat out of date. Those provisions of the regulation which allow modification of the basic criterion of comparability with private housing as the basis of reasonable value need clarification and revision to provide additional flexibility. The methods of determining comparability set forth in the Circular can be improved and simplified by using the experience the agencies have gained during the period it has been in effect. Although this Circular is controlling, by virtue of the cited appropriation provision, we believe that this subject matter should be restated in substantive legislation as proposed in the attached draft bill. This would vest authority in the President, on a permanent and flexible basis, to prescribe the necessary regulations to accomplish the objectives of the present Circular and the existing statutes.

Since 1928, several other laws have been enacted which authorize rental of quarters to Government personnel. The Act of July 2, 1945, as amended (37 U.S.C. 111a), authorized the occupancy of certain quarters on a rental basis by members of the uniformed services who are authorized to continue to receive their basic allowances for quarters. Section 404(f) and 405 of the Act of August 11, 1955, as amended (42 U.S.C. 1594a(f), 1594b) authorized the occupancy of Capehart and Wherry housing, whenever acquired by the Government, on a rental basis, including military occupancy in some cases. These provisions of law did not specify how the rental rates were to be determined, but Bureau of the Budget Circular No. A-45 and section 208 of the General

- 5 -

Government Matters Appropriation Act of 1959 are now controlling with respect to rental rates for these types of housing.

Section 407(a) of the Act of August 30, 1957 (Public Law 85-241), authorizes the rental of inadequate public quarters to members of the uniformed services, and provides that such personnel will be paid an adjusted quarters allowance amounting to the net difference between the fair rental value and their basic allowance for quarters. The section provides that it shall be administered under regulations prescribed by the President. These regulations have been issued by the heads of the departments to which the Act applies after approval by the Director of the Bureau of the Budget under a delegation of powers from the President contained in Executive Order No. 10766, dated May 1, 1958. In addition to setting standards of adequacy, these regulations prescribe methods of setting "fair rental value" on the basis of comparability in accordance with the requirements of Budget Circular No. A-45.

The draft bill will continue the basic authority to provide quarters, household furniture and equipment, utilities, subsistence and laundry service for civilians but does not authorize new construction or other acquisition. The bill will also apply to the instances where Government employees occupy Government quarters administered by private contractors. It will bring up to date and clarify the basis for fixing rents and related charges for all Government housing provided on a rental basis, wherever located, and whether occupied by civilian or uniformed personnel. The experience of the agencies under Circular No. A-45 points up a number of situations which we believe warrant

- 6 -

modification of the regulations, including situations where (a) there is no comparable commercially rented housing; (b) employees are forced to live under hardship conditions; (c) employees live in virtual isolation for long periods of time or must travel great distances to reach schools, churches, medical, shopping and social facilities; and (d) employees, for the convenience of the Government, occupy quarters which are either too large or inadequate for their families. The draft bill will continue the present policy of basing rental charges on reasonable value of the quarters to the recipient, but under the regulations these needed modifications will be established. However, it would continue the statutory prohibition against employees being required to occupy Government quarters unless a determination has been made that necessary service cannot be rendered or property of the United States cannot be adequately protected otherwise.

The bill would also permit the proposed regulations to provide a similar basis for the determination of charges for household furniture and equipment, utilities, subsistence and laundry service.

We recommend this draft bill be given the favorable consideration of the Congress.

Sincerely yours,

Director

Honorable Sam Rayburn  
Speaker of the House  
of Representatives  
Washington 25, D. C.

Enclosure

Identical letter to be sent to the President of the Senate.

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Next 1 Page(s) In Document Exempt

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